

**ANTONIO DE LA CRUZ, RODOLFO CALAMBA, AVELINO SILVESTRE,
ELADIA DURIA, ANGEL LABAY, ANASTACIA ORTIZ, GENOVEVA
ROQUE, REGINA BALAIS, ONOFRE IBARRA, SATURNINO MELIDA,
PASTOR CONSIG...***G.R. No. L-28095. July 30, 1969*

Ponente: CONCEPCION, C.J.

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In this special civil action, the petitioners seek a writ of cer-tiorari to annul two (2) orders of Honorable Pedro J1. Bautista, as Judge of the Court of First Instance of Rizal, Branch III, dated June 19 and July 22, 1967. Soon after the filing of the petition herein, we issued an order restraining respondent Judge from enforcing his order of June 19, 1967, and from acting upon a motion of Perfecto Burgos and Alejandra Marquez, dated July 11, 1967.

The petitioners herein were defendants in a forcible entry and detainer case[1] of the municipal court of Parañaque, Rizal, filed, on November 4, 1966, by the spouses Perfecto Burgos and Alejandra Marquez, hereinafter referred to as respondents. In their complaint, the latter alleged that they are lessees of the Philippine National Railways (PNR) "and/or persons entitled to the possession" of a strip of land, of about 3, 215 square meters, of the Paco-Naic Abandoned Railroad Line, in the Barrio of Sto. Niño, Municipality of Parañaque, Province of Rizal; and that, in the evening of September 24, 1966, petitioners herein, through force, intimidation, threats, strategy and stealth, took possession of portions of said land of about 20 square meters each, and proceeded to construct thereon make-shift houses, which portions they refused to vacate despite repeated demands. After appropriate proceedings, the municipal court rendered a decision, on January 5, 1967, commanding petitioners herein to vacate the premises in question and restore the possession thereof to the herein respondents, as well as to pay a monthly rental of P40.00 each, from September 24, 1966 until the premises are vacated, and the sum of P500, by way of attorney's fees, in addition to the costs. Soon thereafter, this decision was set aside to give petitioners a "last opportunity" to introduce additional evidence, upon the reception of which, on February 28, 1967, the municipal court reproduced the findings made in its decision of January 5, and reiterated the dispositive part thereof.

Subsequently, petitioners filed a motion, dated March 6, 1967, praying, in effect, that the monthly rentals to be paid by each of them be reduced "and that the amount of supersedeas bond be correspondingly based thereon." Acting upon this motion, which was treated as one for reconsideration, on March 11, 1967, the court amended its decision of February 28, 1967, by reducing said monthly rentals from P40 to P10 each. Two (2) days later, petitioners moved that they be allowed to appeal as pauper litigants and that the monthly deposits to be made by them be fixed at the same amount that respondents "would otherwise pay the Philippine National Railways for the same lot." In an order, dated March 16, 1967, petitioners were allowed to appeal as pauper litigants, without payment of the appellate docket fee and "the necessary appeal bond," and the clerk of court was directed to transmit the records of the case to the Court of First Instance of Rizal, Pasay City Branch, where it was docketed as Civil Case No. 2977-P.

Over a month later, or on April 19, 1967, respondents filed, with the latter Court, presided over by Judge Bautista, a petition for the immediate execution of the appealed decision, for failure of petitioners to file a supersedeas bond and to deposit the monthly rentals that fell due during the appeal. Despite petitioners' opposition thereto, on June 19, 1967, Judge Bautista issued an order granting said petition and directing the issuance of the corresponding writ of execution. On July 11, 1967, petitioners sought a reconsideration of this order. Respondents, in turn, filed a petition, bearing the same date, alleging that, as Deputy Provincial Sheriff of Rizal, Francisco Tejones had served upon the petitioners copies of the writ of execution, issued on June 23, 1967, and given them ten (10) days to vacate the portions respectively held by them, and that, despite the expiration of said period, petitioners are still occupying said portions and show no sign of their intent to leave the same, and praying, accordingly, that a special order be issued directing the sheriff to demolish said houses. Soon thereafter, or on July 22, 1967, Judge Bautista denied the aforesaid motion for reconsideration, in view of which, on September 29, 1967, petitioners commenced the present special civil action against the respondents and Judge Bautista, as well as deputy provincial sheriff Tejones, to restrain the enforcement of the decision of the municipal court and annul the aforementioned orders of June 19 and July 22, 1967.

Petitioners maintain that respondent Judge Bautista has committed a grave abuse of discretion in ordering the issuance of said writ of execution, because although they had not filed the supersedeas bond required to suspend the execution of the decision of the municipal court, this was due to an honest mistake or excusable negligence on their part, for they had asked the municipal court to fix the amount of said bond and, yet, the court did not do so, because of which, they entertained the honest belief that they were relieved from the duty of filing the bond, until its amount shall have been fixed by the court of first instance.

In this connection, Section 8 of Rule 70 of the Rules of Court explicitly provides that "(i)f judgment is rendered against the defendant" in a forcible entry case, "execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond, approved by the justice of the peace or municipal court x x x to enter the action in the Court of First Instance and to pay the rents, damages, and costs accruing down to the time of the judgment." It has been repeatedly held that the requirement of a supersedeas bond is "mandatory"¹ and cannot be dispensed with by the courts;² that, when said bond is not filed, the duty of the court to order the execution of the appealed decision is "ministerial and imperative";³ and that the execution of the judgment shall then issue "immediately".⁴

The cases of *Tagulimot v. Makalintal*⁵ and *Tolentino v. Court of First Instance*⁶ cited by the petitioners do not support their pretense. In the first, we declared that, although a court of first instance may, in its discretion, give the interested party a reasonable time within which to file a supersedeas bond or to replace a defective one¹ no abuse of discretion had been committed by the court in granting the motion for execution, because no such bond had been filed and appellant had not asked for time to do so. It is worthy of notice that, subsequently thereto, the *Tagulimots* had filed a bond, which was, however, disallowed. Yet, it was held that the aforementioned discretion of the appellate court to allow or disallow therein the filing of a supersedeas bond had not been abused. Considering that, similarly, petitioners herein had not asked Judge Bautista to grant them time to file a supersedeas bond, before the issuance of the writ of execution complained of; that, unlike the *Tagulimots*, neither had petitioners herein filed such bond up to now; that they merely asked for time to do so, over two (2) weeks after the issuance of said writ; and that petitioners have not even alleged, much less shown, that Judge Bautista had gravely abused his discretion in denying their motion of July 11, 1967, it is apparent that the *Tagulimot* case militates against their pretense.

In the *Tolentino* case, there was a supersedeas bond, except that it was filed with the court of first instance, instead of the municipal court. Besides, the issue in that case was whether the Judge of first instance had abused

his discretion in allowing said bond, and the Supreme Court resolved the question in the negative. It does not follow from this that the Judge would have committed a grave abuse of discretion reviewable by certiorari had he disallowed said bond. Indeed, in the subsequent case of *Tagulimot*, it was ruled precisely that, since the appellate court had discretion to allow or disallow the filing of a bond, it follows that its choice in favor of the second alternative is not an abuse of discretion. In fact, such was the view taken in *Clemente v. Court of Appeals*.²

Independently of the foregoing, it is not disputed that petitioners herein had neither paid nor deposited the monthly rentals that had accrued during the pendency of the appeal. Hence, it is clear that respondent Judge had neither abused his discretion nor committed an error of judgment, but merely complied with his ministerial duty, under Section 8 of Rule 70 of the Rules of Court, in ordering the issuance of the corresponding writ of execution.³

Then, again, contrary to the allegation in the petition herein, petitioners do not appear to have a valid defense. Indeed, their answer in the municipal court alleges that respondents are not entitled to the possession of the land in question, because their contract of lease with the PNR had ended on July 12, 1960. In their opposition to respondents' petition for immediate execution, petitioners averred, however, that respondents had, in 1966, paid the back rentals for six years, which were seemingly accepted by the PNR, thereby indicating that it had consented to a renewal of the lease contract. What is more, petitioners admitted, in their answer, that respondents had subsequently won in the bidding for the purchase of the land in question, although the same had not, as yet, been formally awarded to them (respondents). As a consequence, respondents are entitled to the possession of said land, either as lessees thereof, or as its purchasers, if the award were eventually formalized.

Regardless of the foregoing, in an action for forcible entry and detainer, the main issue is one of priority of possession¹. The legal right thereto is not essential to the possessor's cause of action, for no one may take the law into his own hands and forcibly eject another or deprive him of his possession by stealth, even if his title thereto were questionable² or actually disputed in another case³. In the present case, both justice and equity are thus in favor of respondents herein.

WHEREFORE, the petition herein should be, as it is hereby dismissed, and the writ prayed for denied, with costs against the petitioners. The restraining order issued by this Court, on September 30, 1967, is, likewise, set aside.

SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.
Zaldivar, J., did not take part.

[1] Civil Case No. 1775.

1 *Acibo v. Macadaeg*, L-19701, June 30, 1964; *Sison v. Bayona*, L-13446, Sept. 30, 1960.

2 *U.S.T. v. Ocampo*, 85 Phil. 144.

3 *Prieto v. Lucidine*, L-9673, Aug. 21, 1956; *Acibo v. Macadaeg*, *supra*.

4 *Pascua v. Nable*, 71 Phil. 186; *Sumintac v. Court*, 71 Phil. 445; *Arcilla v. De Constancio*, 74 Phil. 445; *Cunaan v. Rodas*, 78 Phil. 800; *Yu Tiong Tay v. Barrios*, 79 Phil. 597.

5 85 Phil. 40.

6 75 Phil. 282.

1 Zamora v. Dinglasan, 77 Phil. 46; Contreras v. Dinglasan, 79 Phil. 42.

2 L-18686, January 24, 1967.

3 Igama v. Soria, 42 Phil. 11; Tomboc v. Court, 46 Phil. 851; Guillena v. Borja, 53 Phil. 379; Cura v. Rodas, 79 Phil. 595; Pañgilinan v. Peña, 89 Phil. 122.

1 Mediran v. Villanueva, 37 Phil. 752; Fuentes v. Justice of the Peace, 67 Phil. 364; Maddammu v. Judge, 74 Phil. 230; Cabal-lero v. Abellana, 15 Phil. 534; Lizo v. Carandang, 73 Phil. 649; Mercado v. Go Bio, 78 Phil. 279; Masallo v. Cesar, 39 Phil. 134.

2 Pitarque v. Sorilla, 92 Phil. 5; Lopez v. Santiago, 107 Phil. 668; Supia v. Quintero, 59 Phil. 312.

3 De Gaerlan v. Martinez, 85 Phil. 375.

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